IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

C.R.P.(P.D).NO.1120 of 2002 and C.R.P.(P.D.)NO. 1121 OF 2002
and
C.M.P.NO.9346 OF 2002

P. Perumal,
S/o. Patti Kandasamy .. Petitioner in both CRPs

-Vs-

1. Minor Kumaresan,
S/o. P. Perumal,
Rep. by his mother
Mrs. Vendammal

2. Mrs. Vendammal,
W/o.P. Perumal .. Respondents in both CRPs

Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure as against the order passed in I.A.Nos.54 & 55 of 2001 in O.S.No.56 of 1996 dated 1.3.2002 on the file of District Munsif at Ranipet, Vellore District.

!For Petitioner : Ms.P. Vidhya for
Mr.R. Subramaniam

^For Respondents 1-2 : Mr.R. Marga Bandhu

:O R D E R

The first defendant is the petitioner in both the cases. He has challenged the two separate orders dated 1.3.2002 in I.A.Nos.54 and 55 of 2001 in O.S.No.56 of 1996 refusing to condone the delay in filing applications under Order 9 Rule 13 C.P.C. A caveat petition had been filed on behalf of the respondents.

2. Both the counsels were heard and orders were reserved.
The present common order shall govern both the Civil Revision Petitions.

3. In O.S.No.56 of 1996 filed by the respondents, the present petitioner had entered appearance and filed written statement. However,

subsequently, Mr.V.V. Ramanathan, the counsel engaged by the petitioner, had left practice. Subsequently, preliminary decree was passed ex-parte and thereafter final decree was also passed exparte. Two separate petitions were filed under Order Rule 13 C.P.C., one for setting aside the preliminary decree and the other for setting aside the exparte final decree.

Both the applications were barred by time. I.A.No.54 of 200 1 and I.A.No.55 of 2001 were filed under Section 5 of the Limitation Act to condone the delay in filing the applications under Order 9 Rule 13 C.P.C. The grounds taken in both the petitions are similar. It is stated that since Mr. Ramanathan, the previous Advocate engaged by the petitioner, had left practice, the petitioner remained in dark regarding the progress of the case and could not take steps. It is further stated that the petitioner was suffering from filariasis and could not attend the Court and could not instruct the Advocate to take steps.

4. A counter had been filed denying the allegations. It was stated that even after the ex-parte preliminary decree, notice in the final decree proceedings was issued and the petitioner did not take any steps. Thereafter, execution case was instituted and the petitioner appeared and paid some amounts in installments and the applications under Order 9 Rule 13 C.P.C. were filed long thereafter.

5. The trial court has considered the question by referring to various materials on record and has held that sufficient cause has not been shown for condonation of delay.

6. In the Civil Revision Petitions, it is contended that since Doctor had been examined to prove the illness of the petitioner, the trial court should have condoned the delay.

7. It is true that question of condonation of delay should be liberally considered to advance the cause of substantial justice. However, in the present case as apparent from the orders passed by the trial court that after passing the preliminary decree, notice had been issued in the final decree proceedings and thereafter notice was further issued in execution case, the petitioner had appeared and paid some amounts in instalments and long thereafter two petitions under Order 9 Rule 13 CPC had been filed. It is further noticed that after Mr. Ramanathan left practice, the case was called on several occasions and on behalf of the petitioner Mr.K.S. Suresh, Advocate had got the matter adjourned to 14.3.1999 to file vakalath for the petitioner. Thereafter the matter was again adjourned on several occasions and the final decree was passed long thereafter. From the aforesaid discussion made by the trial court, it is apparent that the plea of the petitioner that he was not aware of the subsequent proceedings, is not acceptable.

8. So far as the Order 9 Rule 13 C.P.C. petition relating to the ex-parte preliminary decree is concerned, the delay is more than 2 years and so far as the Order 9 Rule 13 C.P.C., petition relating to the ex-parte

final decree is concerned, the delay is more than one year. The trial court on consideration of the materials on record has refused to condone the delay on discussion of relevant evidence. It cannot be said that the order of the trial court suffers from any jurisdictional error so as to warrant interference in civil revision. Even though the plea of illness has been believed, as rightly observed by the trial court, the illness was not so serious in nature so as to prevent the petitioner from attending the court or handing over the records of the suit to the Advocate.

9. For the aforesaid reasons, I do not find any merit in the Civil Revision Petitions, which are accordingly dismissed. No costs. Consequently, C.M.P.NO.9346 of 2002 is closed.

Index : Yes
Internet : Yes

dpk

To

1. The District Munsif, Ranipet at Vellore District.
2. The Record Keeper, V.R. Section, High Court, Madras